

CV 10 2470

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ MAY 28 2010 ★

MIGUEL E. MERCEDES on behalf of himself
and all others similarly situated

LONG ISLAND OFFICE

Plaintiff,

(S.I.)

DEARIE, CH. J.

-against-

POLLAK, M.

NCO FINANCIAL SYSTEMS, INC.

Defendant.

CLASS ACTION COMPLAINT

Introduction

1. Plaintiff Miguel E. Mercedes seeks redress for the illegal practices of Allied Interstate, Inc. concerning the collection of debts, in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA").

Parties

2. Plaintiff is a citizen of the State of New York who resides within this District.
3. Plaintiff is a "consumer" as that term is defined by Section 1692(a)(3) of the FDCPA, in that the alleged debt that defendant sought to collect from plaintiff is a consumer debt, purportedly owed to Citibank Home Depot.
4. Upon information and belief, defendant is a Pennsylvania corporation with a principal place of business is located in Horsham, Pennsylvania. It is an active foreign corporation in the State of New York.

5. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.
6. Defendant is a “debt collector” as that term is defined by the FDCPA, 15 U.S.C. § 1692(a)(6).

Jurisdiction and Venue

7. This Court has Federal question jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.
8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), as the acts and transactions that give rise to this action occurred, in substantial part, in this district. Venue is also proper in this district since the defendant transacts business in this district and the collection letter was sent into this district.

Allegations Particular to Miguel E. Mercedes

9. On information and belief, on a date better known by defendant, defendant began attempting to collect an alleged consumer debt from the plaintiff.
10. Defendant sent the plaintiff an initial collection letter seeking to collect a balance allegedly owed to Citibank Home Depot incurred for personal purposes dated September 22, 2009.
11. Said letter sets forth the balance owed as \$720.07.
12. Said letter sets forth that there is no interest, the interest rate is left blank, there are no collection charges, no costs and no other charges and that the total balance is \$720.07.
13. Said letter can be interpreted that up until the date of November 5, 2009, there has been no other charges imposed.

14. The consumer is not able to calculate what will be the future interest or other charges.
15. The interest rate could be zero or could be an amount of interest.
16. The letter is to be interpreted that the account will not accrue these types of charges in the future.
17. The defendant sent a subsequent letter to the plaintiff dated November 5, 2009.
18. The said November 5, 2009 letter set forth a principal balance of \$836.91.
19. Said letter sets forth that there is no interest, the interest rate is left blank, there are no collection charges, no costs and no other charges and that the total balance is \$836.91.
20. The initial letter confuses the least sophisticated consumer as to whether there will be interest imposed or not.
21. The second letter confirms that other charges and/or interests was imposed after the date of the sending of the initial letter.
22. The said September 22, 2009 letter is in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692e(10) for engaging in deceptive practices and 1692g for failing to clearly set forth the accurate balance of the alleged debt which causes the least sophisticated consumer confusion.

AS AND FOR A FIRST CAUSE OF ACTION

Violations of the Fair Debt Collection Practices Act brought by plaintiff on behalf of himself and the members of a class, as against the defendant.

23. Plaintiff restates, realleges, and incorporates herein by reference, paragraphs 1-22 as if set forth fully in this Cause of Action.
24. This cause of action is brought on behalf of plaintiff and the members of a class.

25. The Class consists of consumers who received the same form letter, as did the plaintiff.

26. The Class consists of all persons whom Defendant's records reflect resided in the State of New York and who were sent a collection letter (a) bearing the defendant's letterhead in substantially the same form as the letter sent to the plaintiff on or about September 22, 2009; (b) the collection letter was sent to a consumer seeking payment of a personal debt to Citibank Home Depot; and (c) the collection letter was not returned by the postal service as undelivered, (d) and that the letter contained violations of 15 U.S.C. § 1692e(10) and 1692g.

27. Pursuant to Federal Rule of Civil Procedure 23, a class action is appropriate and preferable in this case because:

(A) Based on the fact that the collection letters that are at the heart of this litigation are mass-mailed form letters, the class is so numerous that joinder of all members is impracticable.

(B) There are questions of law and fact common to the class and these questions predominate over any questions affecting only individual class members. The principal question presented by this claim is whether the Defendant violated the FDCPA.

(C) The only individual issue is the identification of the consumers who received the letters, (*i.e.* the class members), a matter capable of ministerial determination from the records of Defendant.

(D) The claims of the plaintiff are typical of those of the class members. All are based on the same facts and legal theories.

(E) The plaintiff will fairly and adequately represent the class members' interests. The plaintiff has retained counsel experienced in bringing class actions and collection-abuse claims. The plaintiff's interests are consistent with those of the members of the class.

28. A class action is superior for the fair and efficient adjudication of the class members' claims. Congress specifically envisions class actions as a principal means of enforcing the FDCPA. 15 U.S.C. 1692(k). The members of the class are generally unsophisticated individuals, whose rights will not be vindicated in the absence of a class action. Prosecution of separate actions by individual members of the classes would create the risk of inconsistent or varying adjudications resulting in the establishment of inconsistent or varying standards for the parties and would not be in the interest of judicial economy.

29. If the facts are discovered to be appropriate, the plaintiff will seek to certify a class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

30. Collection letters, such as those sent by the defendant are to be evaluated by the objective standard of the hypothetical "least sophisticated consumer."

Violations of the Fair Debt Collection Practices Act

31. The defendant's actions violate the Fair Debt Collection Practices Act.

32. Because the defendant violated of the Fair Debt Collection Practices Act, the plaintiff and the members of the class are entitled to damages in accordance with the Fair Debt Collection Practices Act.

WHEREFORE, Plaintiff, respectfully requests that this Court enter judgment in his favor and on behalf of the members of the class, and against the defendant and award damages as follows:

- (a) Statutory damages provided under the FDCPA, 15 U.S.C. 1692(k);
- (b) Attorney fees, litigation expenses and costs incurred in bringing this action; and
- (c) Any other relief that this Court deems appropriate and just under the circumstances.

Dated: Cedarhurst, New York
May 11, 2010



Adam J. Fishbein, P.C. (AF-9508)

Attorney At Law

Attorney for the Plaintiff

483 Chestnut Street

Cedarhurst, New York 11516

Telephone (516) 791-4400

Facsimile (516) 791-4411

Plaintiff requests trial by jury on all issues so triable.



Adam J. Fishbein (AF-9508)

PO BOX 15630
DEPT 72
WILMINGTON DE 19850

NCO FINANCIAL SYSTEMS INC

507 Prudential Road, Horsham, PA 19044

800-520-7427

OFFICE HOURS:

8AM-9PM MON THRU THURSDAY

8AM-5PM FRIDAY

8AM-12PM SATURDAY

Sep 22, 2009

Calls to or from this company may be monitored
or recorded for quality assurance.

5489-143



PF5636
MIGUEL E MERCEDES
29 PORT LN
2ND FL
STATEN ISLAND NY 10302-1154

CREDITOR: CITIBANK HOME DEPOT

ACCOUNT #: 6035320044801056

REGARDING: THE HOME DEPOT

PRINCIPAL: \$ 720.07

INTEREST: \$ 0.00

INTEREST RATE:

COLLECTION CHARGES: \$ 0.00

COSTS: \$ 0.00

OTHER CHARGES: \$ 0.00

TOTAL BALANCE: \$ 720.07

The named creditor has placed this account with our office for collection. It is important that you forward payment in full. Please make payment payable to Citibank.

If you choose not to respond to this notification, we will assign your account to a collector with instructions to collect the balance.

To assure proper credit please put our internal account number PF5636 on your check or money order and enclose the lower portion of this letter with your payment. If you need to speak to a representative contact us at 800-520-7427.

Returned checks may be subject to the maximum fees allowed by your state.

You may also make payment by visiting us online at www.ncofinancial.com. Your unique registration code is CPF56367-24KF18.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice, this office will obtain verification of the debt or obtain a copy of a judgement and mail you a copy of such judgement or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

This is an attempt to collect a debt. Any information obtained will be used for that purpose. This is a communication from a debt collector.

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT (MAKE SURE ADDRESS SHOWS THROUGH WINDOW)

THIS COLLECTION AGENCY IS LICENSED BY THE
DEPARTMENT OF CONSUMER AFFAIRS OF THE CITY OF NEW
YORK; LICENSE#0907469
CONTACT ALEX DREW AT NCO FINANCIAL SYSTEMS, INC.

Account #	Total Balance
PF5636	\$ 720.07

MIGUEL E MERCEDES

Payment Amount

\$

Check here if your address or phone number has
changed and provide the new information below.

Mail Payment To:



NCO FINANCIAL SYSTEMS

PO BOX 15889

WILMINGTON, DE 19850-5889

NCOP A
143

017200PF563670000001900000000000720073

PO BOX 15630
DEPT 72
WILMINGTON DE 19850

NCO FINANCIAL SYSTEMS INC

507 Prudential Road, Horsham, PA 19044

800-520-7427
OFFICE HOURS:
8AM-9PM MON THRU THURSDAY
8AM-5PM FRIDAY
8AM-12PM SATURDAY
Nov 5, 2009

Calls to or from this company may be monitored
or recorded for quality assurance.

5465-284



PF5636
MIGUEL E MERCEDES
29 PORT LN
2ND FL
STATEN ISLAND NY 10302-1154

CREDITOR: CITIBANK HOME DEPOT
ACCOUNT #: 6035320044801056
REGARDING: THE HOME DEPOT
PRINCIPAL: \$ 836.91
INTEREST: \$ 0.00
INTEREST RATE:
COLLECTION CHARGES: \$ 0.00
COSTS: \$ 0.00
OTHER CHARGES: \$ 0.00
TOTAL BALANCE: \$ 836.91

*** SETTLEMENT OFFER ***

We have been authorized by the above referenced creditor to accept \$627.68 as a lump sum of the above amount. This offer may expire without notice. Before making payment, please confirm with one of our representatives that this offer has not expired.

Send your check or money order to the address listed below. Please make payment payable to Citibank.

If you have any further questions or need assistance, please contact us at 800-520-7427.

You may also make payment by visiting us online at www.ncofinancial.com. Your unique registration code is CPF56367-24KF18.

This is an attempt to collect a debt. Any information obtained will be used for that purpose. This is a communication from a debt collector.

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YORK; LICENSE#0907469
CONTACT ALEX DREW AT NCO FINANCIAL SYSTEMS, INC.

Account #	Total Balance
PF5636	\$ 836.91

MIGUEL E MERCEDES

Payment Amount

\$

Check here if your address or phone number has
changed and provide the new information below.

Mail Payment To:

|||||
NCO FINANCIAL SYSTEMS
PO BOX 15889
WILMINGTON, DE 19850-5889

NCOP E1
284

017200PF563670000001900000000000836910